

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Forrester Environmental
Services, Inc. and
Keith E. Forrester

v.

Civil No. 07-cv-404-JD

Wheelabrator Technologies, Inc.

O R D E R

The plaintiffs, Keith E. Forrester and his company, Forrester Environmental Services, Inc., brought suit against Wheelabrator Technologies, Inc., alleging claims of interference with business relations under the Lanham Act and New Hampshire law and patent infringement. Wheelabrator moved to dismiss the claims. The plaintiffs filed an amended complaint and an objection to the motion to dismiss. Wheelabrator filed a reply, addressing the amended complaint.

An amended complaint supercedes the original complaint. Connectu LLC v. Zuckerberg, 522 F.3d 82, 91 (1st Cir. 2008). As a result, once an amended complaint is filed, courts generally treat a pending motion to dismiss as moot. See, e.g., Am. Guarantee & Liab. Ins. Co. v. CTA Acoustics, Inc., 2008 WL 1924229 at *2 (E.D. Ky. Apr. 29, 2008) (citing cases); Angel v. Eldorado Casino, Inc., 2008 WL 1914330 at *1 (D. Nev. Apr. 25, 2008); Collins v. Winex Invs., LLC, 2008 WL 927572 at *1 (Apr. 4,

2008); Gulf Coast Recycling, Inc. v. Johnson Controls, Inc., 2008 WL 434880 at *1 (M.D. Fla. Feb. 14, 2008); Pouliot v. Town of Fairfield, 2002 WL 989477 at *1 n.2 (D. Me. May 14, 2002).

In this case, Wheelabrator attempted to conform its motion to the amended complaint by addressing the amended complaint in its reply. Wheelabrator challenges some of the new allegations in the amended complaint because they are based on "information and belief." In doing so, Wheelabrator is confusing the standard for pleading a claim with the standard for opposing summary judgment. Wheelabrator also compares the allegations in the two complaints to suggest infirmities in the amended complaint. None of those arguments are appropriate bases on which to consider a motion to dismiss the amended complaint.

Conclusion

For the foregoing reasons, the defendant's motion to dismiss (document no. 11) is denied as moot without prejudice to move to dismiss the operative complaint in this case.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

May 21, 2008

cc: Michael R. Callahan, Esquire
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Michael J. Markoff, Esquire
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